

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of AT&T Services, Inc. For	)	
Forbearance under 47 U.S.C. § 160(c) From	)	WC Docket No. 16-363
Enforcement of Certain Rules for Switched	)	
Access Services and Toll Free Database Dip	)	
Charges	)	

**OPPOSITION OF THE 8YY ORIGINATION COMPETITIVE SERVICE PROVIDERS TO THE  
PETITION OF AT&T SERVICES, INC. FOR FORBEARANCE UNDER 47 U.S.C. § 160(c)**

**I. INTRODUCTION AND SUMMARY**

Teliix, Inc. ("Teliix"), through counsel, respectfully files with the Federal Communications Commission ("Commission" or "FCC"), an opposition to the Petition of AT&T Services, Inc. (AT&T) for Forbearance under 47 U.S.C. § 160(c) ("Petition"). AT&T seeks the effective cancelation of the rules that allow local exchange carriers ("LECs") to bill for tariff charges relating to: 1) terminating tandem access and transport; and 2) toll free database queries. Teliix specifically opposes AT&T's request to forbear from regulation of rules that permit tariff charges for database queries on toll free (8YY) calls.

Teliix is a competitive local exchange carrier ("CLEC") based in Denver, Colorado. The Company provides voice and data services to both retail and wholesale customers, including toll free (8YY) origination service (discussed below). Teliix is addressing only that portion of AT&T's Petition that seeks forbearance from the FCC's rules that allow LECs to file tariff pages for toll free database query services.

This opposition explains both toll free and toll free origination service, with the latter being a wholesale service various competitive local exchange carriers offer to other carriers and service providers in lieu of self-provisioning. This service allows carriers and other service providers to deliver all dialed toll free calls to the wholesale provider that, in turn, performs a database query to identify

the interexchange carrier ("IXC") serving the dialed number. The CLEC then routes the call to such IXC directly or indirectly. Billing and revenue division comply with FCC rules.

Because AT&T filed its Petition as a customer of toll free database queries, rather than as a provider of query service, AT&T lacks standing to obtain forbearance. AT&T's Petition is contradicted by its own rates for database queries and billing practices. Evidence shows AT&T's database query rates are similar to those of other carriers.

AT&T does not always pay the database query charges about which it complains, but rather, unilaterally substitutes its own lower rate. There is evidence AT&T may be charging some of its customers higher database query than stated in applicable ANC agreements.

#### **a. 8YY (Toll Free) Service**

Toll free service "involves a subscriber agreeing to pay an IXC for all calls made to it using a predesignated 800 number. Toll-free service thus enables a business to provide its customers, potential customers, employees, and others with a free and convenient means of contacting it."<sup>1</sup> Once its network "sees" a dialed toll free number (for example, 800-555-4321), the originating LEC queries the toll free database to determine which IXC serves the dialed number. It is an uncontestable fact that, without performance of the database query, the originating LEC would be unable to determine which IXC serves the dialed 8YY number and, further, the toll free call would not be completed.

For well more than 20 years, the Commission's rules have allowed LECs performing a database query to charge for that function as part of exchange access services.<sup>2</sup> Incumbent LECs' ("ILECs") rates for database queries are regulated either by price caps or traditional rate-of-return principles,

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<sup>1</sup> *Beehive Telephone Co., Inc. v. FCC*, 179 F.3d 941, 942 (D.C. Cir. 1999).

<sup>2</sup> *Provision of Access for 800 Service*, Report & Order, 4 FCC Rcd 2824 ("800 Access R&O"); Second Report & Order, 8 FCC Rcd 907 (1993). *See also*, 47 C.F.R. § 69.118.

including Parts 32, 36, 61, 64, 65 and 69 of the FCC's rules. CLEC rates for database queries are not price regulated per se, but must be "just and reasonable" and are subject to complaint to the FCC.<sup>3</sup>

As the Commission is well aware, the IP revolution has touched toll free calling. Just as many LECs and VoIP service providers use IP technology to originate, transport and terminate ordinary local and interexchange calls, so too do they use IP technology for 8YY calls. Toll free service subscribers expect all calls dialed to their toll free number to be completed as dialed irrespective of how such calls are routed, switched and transported and without regard to the type of technology used.

#### **b. 8YY (Toll Free) Origination Service**

While many CLECs and their VoIP service provider partners handle 8YY calls from their end users, others do not. Instead, they have contracted with other CLECs, such as Teliix, O1 Communications, Peerless and Impact Telecom, to handle toll free traffic. In such instances, once the first CLEC sees a toll free number dialed, it immediately sends the call in IP format to the second CLEC that is providing toll free origination service. That second CLEC, in turn, provides the functional equivalent of end office switching<sup>4</sup> and performs a toll free database query to discover the carrier identification code ("CIC") of the IXC serving the dialed toll free number. Once the correct IXC has been identified, the second CLEC routes the call to that carrier, either directly or through a tandem switch. The IXC then ensures completion of the toll free call to its subscriber (e.g., a hotel reservation center) and bills it accordingly.

The second CLEC normally bills the IXC end office switching, toll free database query and, if provided by the second CLEC, tandem switching<sup>5</sup> or direct trunking. Under the typical contract for

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<sup>3</sup> *Access Charge Reform, and Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001).

<sup>4</sup> 47 C.F.R. § 51.903(d). "End Office Access Service means: (3) Any functional equivalent of the incumbent local exchange carrier access service provided by a nonincumbent local exchange carrier."

<sup>5</sup> In the event the second CLEC does not have a direct connection to the IXC or provide its own tandem switching, the second CLEC will route the call (in IP format) to a third-party tandem operator, which, in turn, will bill the IXC a rate for its services.

wholesale 8YY origination services, the first CLEC will not bill the IXC any access charges, but often receives a commission for using the second CLEC's services.

## **II. AT&T Lacks Standing to Seek Forbearance for Other Carriers**

AT&T does not have statutory standing to seek forbearance for other carriers, and, as such, its Petition must be dismissed.<sup>6</sup> Section 10(c) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 160(c), permits a "telecommunications carrier, or class of telecommunications carriers" to file a petition with the FCC seeking forbearance for specific statutes or regulations. However, Section 10(c) specifically permits carriers to seek forbearance relief only from laws or regulations that affect the services they in fact provide. Congress clearly did not intend to permit any carrier to attempt to use forbearance as a sword to interfere with (indeed, even to harm) other carriers.<sup>7</sup>

As noted earlier, Section 69.118 of the Commission's rules allow LECs to recover the costs for database queries in an access charge. AT&T has filed its petition as a consumer of database queries necessary for its retail and wholesale toll free services and not as a provider of those services as a local exchange carrier. Since the regulation for which forbearance is sought does not apply to AT&T as petitioner herein, it has failed to meet the statutory language of Section 10(c) that permits a carrier or carriers to seek forbearance for themselves or their services. Hence, AT&T lacks standing under Section 10 and cannot seek the relief requested in its petition. The Petition should, therefore, be summarily dismissed.

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<sup>6</sup> Courts have consistently held that a lack of standing goes directly to the issue of jurisdiction and, therefore, can be raised at any time. *See, e.g., Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan*, 883 F.2d 345, 348 (5<sup>th</sup> Cir. 1989).

<sup>7</sup> Contrast Section 208 of the Act, 47 U.S.C. § 208. That statute permits "any person" to file a complaint with the FCC concerning "anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof."

### **III. AT&T's Petition Is Contradicted by Its Own Rates for Database Queries and Billing Practices**

#### **a. AT&T's Database Query Rates Are Similar to Those of Other Carriers**

Based on its Petition, AT&T would have the FCC believe it is being "abused" by LECs, especially CLECs, charging excessive rates for database queries that, in turn, are passed along to toll free subscribers in the form of higher rates. The facts, as evidenced by AT&T's pricing of its own database queries in the marketplace, show this not to be true. Indeed, if any party is gouging customers, it is AT&T.

AT&T argues costs for performing toll free database queries are very modest to the point where they could be recovered by a nonrecurring charge.<sup>8</sup> The clear implication to be drawn from AT&T's argument is that, based on these "minimal costs," database query charges should be set close to zero.<sup>9</sup>

Yet, an examination of AT&T's business practices and pricing contradicts its Petition. AT&T, of course, is more than an interexchange carrier. AT&T also operates ILEC and CLEC businesses. One of those businesses is the former BellSouth Telecommunications, Inc. ("BellSouth"), an ILEC serving much of the Southeastern United States. As an ILEC, BellSouth offers interstate exchange access services, including database query service, through its FCC tariff, BellSouth Tariff F.C.C. No. 1.

In 1999, BellSouth offered four options for "Toll Free Dialing Ten Digit Screening Service" and charged for each of those options on a per query basis. As shown in Exhibit A (7<sup>th</sup> Rev. Page 6-178.1, Sec. 6.8.11) hereto, BellSouth's rates were \$0.00421, \$0.004296, \$0.00383 and \$0.00431. After the various corporate transactions that resulted in the "new" AT&T, including BellSouth, the BellSouth interstate access tariff was re-filed. BellSouth still offers four options for "Toll Free Dialing Ten Digit

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<sup>8</sup> Petition, at 18-19.

<sup>9</sup> AT&T does not provide any actual cost information, but rather, relies on comments made by parties filing comments in a rulemaking proceeding active in the 1980s and 1990s. *See 800 Access R&O*, at ¶ 73 and n.147. It would be unreasonable for the Commission to take action based on such stale information. At a bare minimum, cost information should be updated.

Screening Service” and charges for each of those options on a per query basis. The rates for those services were filed in June 2011 and have not been changed. As shown in Exhibit B (Original Page 6-379, Sec. 6.8.11) hereto, BellSouth’s rates remain \$0.00421, \$0.004296, \$0.00383 and \$.00431. If the actual costs for performing a database query are as low as claimed by AT&T’s Petition, why are BellSouth’s rates the same as they were back in 1999?

Moreover, it is not just AT&T’s ILEC operations that charge significant rates for database queries. AT&T’s CLEC operations charge query rates as high as \$.012072 in Las Vegas and other Nevada exchanges served by CenturyLink. Exhibit C, AT&T Corp. Tariff F.C.C. No. 1, 1<sup>st</sup> Rev. Page 17-38 and following, Section 17.13.3.H. Indeed, AT&T Corp.’s Tariff shows it charges a rate higher than its basic, but “high,” BellSouth rate of \$0.00421 in thirty-one market areas.

AT&T compares database query rates for several LECs in its Petition, specifically in footnote 29. There it lists query charges for: Advanced Communications Tech., Inc. (using the NECA rate) at \$0.0057; Birch Communications at \$0.0075; Frontier Communications at \$0.01047977); and XO Communications, LLC at \$ 0.011. These appear to be examples of so-called “high rates” in contrast to AT&T’s Ameritech (\$0.002304) and Southwestern Bell (\$0.002531) rates for database queries. But conspicuously absent is a comparison to AT&T’s BellSouth basic rate of \$0.00421 and AT&T’s CLEC query rates. AT&T appears to be hiding its “dirty laundry.”

AT&T’s CLEC query rates are higher than that of Advanced Communications Tech., Inc. in 19 markets. AT&T’s rates are higher than Birch Communications in 14 markets. AT&T’s CLEC rate in Las Vegas, Nevada is higher than Frontier Communications’ and XO Communications’ rates.

Unless AT&T is purposely charging excessive database query rates that are unjust and unreasonable, it must believe its rates as high as more than a penny per query are cost-related, reasonable rates. Yet it attacks the same level of rates as being unreasonable when another LEC

charges them. AT&T is, in essence, making a “do as I say, not as I do” argument. AT&T simply has no credibility on the issue of database query rates.

If the costs for database query are actually near zero per transaction as implied by AT&T, it follows that BellSouth’s and AT&T’s CLEC toll free database query rates may well be excessive and, thus, unjust and unreasonable and unduly discriminatory under Sections 201(b) and 202(a) of the Act, 47 U.S.C. 201(b) and 202(a). An investigation into all these AT&T toll free database query rates may well be in order. However, in any event, the credibility of AT&T’s Petition arguments is dashed.

**b. AT&T Does Not Always Pay Other Carrier’s Tariff Database Query Rates**

AT&T states (at 19): “Today, an unusual and disturbing pattern has emerged with respect to the pricing of toll free database queries - which, under the Commission’s current regime, IXCs offering toll-free services have no choice but to accept and purchase at a LEC’s tariffed rate.” This is a false and misleading statement. AT&T likely pays some LECs’ database query rates as set forth in the applicable tariffs. However, AT&T also refuses to pay other LECs’ tariff rates for database queries; creates its own “nationwide average rate”; and engages in self-help by short-paying LEC bills.<sup>10</sup>

For example after paying access bills for more than a year, AT&T began short-paying Teliix’s (“Teliix”)<sup>11</sup> access bills for 8YY traffic in 2014. AT&T claimed end office switching and local switching common trunk port did not apply to wholesale toll free calls and, instead, paid an AT&T employee-created “national average tandem rate.” Similarly, AT&T substituted another employee-created “national average database query rate” for Teliix’s tariff rate. After the parties were unable to resolve

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<sup>10</sup> Courts continue to conclude “self-help” by carrier in refusing to pay another carrier’s tariff charges is an unlawful practice under the Act. *Centurytel of Chatham, LLC v. Sprint Commc’ns Co.*, Civil Action No. 09-1951, *slip op.* at 22-23 (W.D. La. May 4, 2016).

<sup>11</sup> Teliix offers 8YY origination service to other CLECs and their VoIP provider partners. In those instances, Teliix’s “wholesale customers” deliver their 8YY calls in IP format and agree not to charge any access to the serving IXC. Teliix provides the functional equivalent of end office switching (call set-up, supervision and management); performs a database query to determine the serving IXC; and routes the call to a third-party tandem switch operator in IP format for completion to the IXC and its toll free subscriber. Teliix bills the IXC end office and database query charges and shares them with its wholesale customers.

this dispute, Teliix sued AT&T in Colorado federal court for collection of its tariff access charges. *Teliix, Inc. d/b/a Teliix Colorado, LLC v. AT&T Corp.*, Civil Action No 15-cv-01472-RBJ (D. Colo.).

**c. When AT&T Engages in Self-Help and Does Not Pay Tariff Database Query Rates, AT&T May be Overcharging Its Customers**

There is ample evidence AT&T is not paying tariff database query charges. Besides the Colorado suit involving Teliix, O1 Communications is also suing AT&T for nonpayment of tariff database query charges. *O1 Communications, Inc. v. AT&T Corp.*, 3:16-cv-01452 (N.D. Calif.). While these are private lawsuits outside the day-to-day responsibilities of the Commission, the facts also raise Commission issues as to whether AT&T is violating the Act by overcharging some of its toll free customers.

AT&T offers two wholesale interexchange services ANC (AT&T Network Connection) and AVOICS (AT&T Voice over IP Connect Service), but only ANC services are at issue here.<sup>12</sup> ANC is designed to provide originating and terminating access plus transport of calls over the AT&T network.<sup>13</sup> While ANC services are generally purchased for outbound calls (domestic and international), ANC services are available with inbound (800/8YY) calling. Teliix and AT&T conducted negotiations for an ANC agreement. Similarly, there is deposition testimony in the Teliix Colorado lawsuit against AT&T acknowledging the availability of inbound service under ANC agreements.

ANC services are priced with two component parts: a pass-through of originating and/or terminating access charges imposed by LECs and long-haul transport (provided by AT&T). And certainly AT&T's transport charges are set to include a margin.<sup>14</sup> Under this pricing scheme, AT&T is supposed to pass along access charge savings in the form of lower prices to its inbound subscribers. For example, on July 1, 2016, terminating access for all Price Cap-regulated ILECs was reduced to

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<sup>12</sup> AT&T Wholesale, "AT&T Voice Services," available at: [https://www.business.att.com/content/productbrochures/w\\_att\\_customized\\_voice\\_solution\\_for\\_service\\_providers.pdf](https://www.business.att.com/content/productbrochures/w_att_customized_voice_solution_for_service_providers.pdf) (last viewed December 2, 2016).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*



\$0.0007 per minute. The rate reduction presumably would be passed through to ANC subscribers on a going forward basis.

ANC contracts include spreadsheets ("rate sheets") that set forth, *inter alia*, access rates charged for originating or terminating traffic. For toll free traffic this includes the serving LEC's toll free database query charge,<sup>15</sup> which AT&T's agreements refer to as a "dip" charge per call. AT&T's documents appear to authorize billing for the specific database query charge for each carrier originating toll free calls and performing the required database query, with the rate taken either from such carrier's tariff or from an interconnection agreement between AT&T and the carrier.

While one may presume AT&T is billing its customer the correct database query rate that it pays when the rate is established in an interconnection agreement, the same assumption cannot be made when the database query rate comes from the LEC's tariff. Why? Because AT&T often refuses to pay the tariff rate, but substitutes its own "national average database query rate." Yet it appears AT&T bills its ANC customers the higher tariff rate, based on a review of the ANC rate sheets.

In a situation where a carrier informs its customer that the carrier will pass through a third-party carrier's access charges, the first carrier is expected to pass through no more than it actually pays. To do otherwise can only be considered engaging in an unjust and unreasonable and, thus, unlawful practice in violation of Section 201(b) of the Act. When it pays its "national average query rate," but bills a LEC's higher, tariff rate, AT&T is simply violating the Act.

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<sup>15</sup> AT&T's rate sheets also include database query charges imposed by wireless carriers when their end users dial toll free telephone numbers. However, in order to avoid confusion and support ease of reading, wireless carriers will be considered "LECs" for purposes of toll free database queries.

#### **IV. Conclusion**

The FCC should not only dismiss AT&T's petition for forbearance for the reasons explained herein, but also open investigations into AT&T's database query rates and its pass-through of other carriers' database query rates to ANC customers.

Respectfully submitted,  
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